



GENERAL PUBLIC
02/01/2000 12:43 A15
RECORDING FEE: 64.00

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OFFICIAL RECORDS OF
ALAMEDA COUNTY
PATRICK O'CONNELL
20 PGS

Recording Requested By:

Kaiser Aluminum & Chemical Corporation

When Recorded, Mail To:

Department of Toxic Substances Control
Northern California
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Coastal Cleanup Operations Branch

20
JA

COVENANT
TO RESTRICT USE OF PROPERTY

Kaiser Center for Technology
E-yard Area
6177 Sunol Boulevard
Pleasanton, California

This Covenant and Agreement ("Covenant") is made on the 30th day of December, 1999 by Kaiser Aluminum & Chemical Corporation ("Covenantor"), which is the owner of record of certain property commonly known as the E-yard Area situated in Pleasanton, County of Alameda, State of California, described in Exhibit, "A" attached hereto and incorporated herein by this reference ("Property"), and by the Department of Toxic Substances Control ("Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of

hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department hereby agree that pursuant to Civil Code section 1471(c) and H&SC section 25222.1, the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01 Description of contamination. Beginning about 1969, there was a research and laboratory facility used by Covenantor as the Kaiser Center for Technology located at 6177 Sunol Boulevard, Pleasanton, California. The Property shown on Exhibit A is a portion of this facility. During the course of that time, certain chemicals were released into soil and, in some cases, groundwater. However, soils affected by such release have been remediated through excavation and removal.

1.02 Health Effects. During investigations of the Property, Tetrachloroethylene (Perchloroethylene, PCE) was detected in soil and shallow groundwater. The potential exposure pathways are inhalation of contaminants, ingestion of contaminants in water or soil, or dermal absorption of contaminants through soil, surface water and/or groundwater.

Groundwater monitoring detected PCE above the Maximum Contaminant Level for drinking water at the Property. The shallow groundwater zone where PCE has been detected is not currently being used at the site. However, should the potential routes of exposure to these contaminants not be minimized or eliminated, the potential human health effects resulting from exposure to the contaminants are as follow:

Tetrachloroethylene (Perchloroethylene, PCE). Short-term exposure to PCE through ingestion or inhalation may cause nausea, vomiting, headache, dizziness, drowsiness, and tremors. Skin contact with liquid causes irritation and blistering. Both liquid and vapor are irritating to the eyes. Liver and kidney toxicities are potential chronic effects of exposure to PCE.

1.03 Surrounding Land Use. The Property is currently zoned for industrial use. The surrounding off-site area has been developed for light-industrial complexes and single residential dwellings. The nearest commercial area is located along Sunol Boulevard, north of the Property. The nearest home is across Sunol Boulevard and approximately 800 feet east of the Property. Village High School is located one mile northeast of the Property. There are no nursing homes, day-care centers, or

hospitals located within a one-mile radius.

ARTICLE II
GENERAL PROVISIONS

2.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the owners and the successors of the owners (as such term is defined below). Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed on the land and run with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471. Each and all of the Restrictions are for the benefit of and enforceable by the Department.

2.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such

Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, assignees, agents, sublessees, and the agents and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants (as such terms are defined below) and that their interest in the Property shall be subject to the Restrictions contained herein.

2.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE III DEFINITIONS

3.01 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

3.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

3.03 Occupant(s). "Occupant(s)" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

3.04 Owner(s). "Owner(s)" shall mean the Covenantor or its successors in interest, including heirs and assigns, who then hold title to all or any portion of the Property.

ARTICLE IV
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

4.01 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as described in said Exhibit A as follows:

- a. Property shall be restricted to commercial or industrial uses only.
- b. Residential development for human habitation shall not be permitted on the Property.
- c. Hospitals or health clinics shall not be permitted on the Property.

- d. Day-care centers for either children or senior citizens shall not be permitted on the Property.
- e. Schools for children under 21 years of age shall not be permitted on the Property.
- f. No drilling for drinking water, oil, or gas shall be permitted on the Property. No Owner(s) or Occupant(s) of the Property or any portion thereof shall extract, utilize, consume or permit to be extracted, unitized or consumed any water from below the surface of the ground without prior written approval of the Department.
- g. The Property shall be used in such a way as to preserve the integrity of any monitoring wells.
- h. The Owner(s) and Occupant(s) shall not conduct any activities on the Property which would cause a potential threat to public health and safety because of the presence of hazardous materials which may have been deposited on the Property.

- i. No Owner(s) or Occupant(s) of the Property or any portion thereof shall permit or allow soils to be excavated or regraded on the Property or any portion thereof without prior approval from the Department.
- j. As required by the Department, the Owner(s) shall monitor the groundwater to determine the effectiveness of any remedy implemented at the Property and report the monitoring results to the Department. In addition, if monitoring detects contamination at levels which may pose threat to public health, safety or welfare or to the environment, the Owner shall submit a plan or correction for Department's approval.
- k. The Owner(s) grants the Department an easement to the Property for inspection, surveillance, monitoring, maintenance, and other activities consistent with the purposes of this covenant as deemed necessary by the Department in order to protect the public health and safety.

4.02 Conveyance of Property. The Owner shall provide notice to the Department no later than thirty (30) days after any

conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

4.03 Enforcement. Failure of the Owner(s) or Occupant(s) to comply with any of the requirements, as set forth in Section 4.01, shall be grounds for the Department, by reason of the Covenant, to require that the Owner(s) or Occupant(s) comply with this covenant and modify or remove any improvements constructed in violation of Section 4.01. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner(s) or Occupant(s) as provided by law.

ARTICLE V VARIANCE AND TERMINATION

5.01 Variance. Covenantor, any Owner(s) or, with the Owner(s)' written consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with California Health & Safety Code

Section 25233 or successor statutes.

5.02 Termination. Covenantor, any Owner(s) or, with the Owner(s)' written consent, any Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with California Health & Safety Code Section 25234 or successor statutes.

5.03 Term. Unless modified or terminated in accordance with Sections 5.01 or 5.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE VI MISCELLANEOUS

6.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

6.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: "Covenantor"

Kaiser Aluminum & Chemical Corporation
6177 Sunol Boulevard
Pleasanton, California 94566
Attention: General Counsel

Copy to:

Department of Toxic Substances Control
Northern California
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief
Coastal Cleanup Operations Branch

6.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

6.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

6.05 Recordation. This instrument shall be executed by the Covenantor and by the Northern California Coastal Cleanup Operations Branch Chief, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

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IN WITNESS WHEREOF, the parties execute this Covenant as of the
date set forth above.

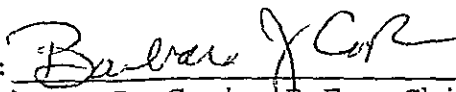
COVENANTOR: Kaiser Aluminum &
Chemical Corporation

By: 
JOHN T. LA DUC

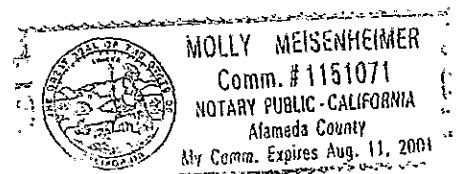
Title: EXEC. VICE PRESIDENT/CHIEF FINANCIAL OFFICER

Date: DECEMBER 30, 1999

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 
Barbara J. Cook, P.E., Chief
Northern California
Coastal Cleanup Operations Branch

Date: Jan 26, 2000

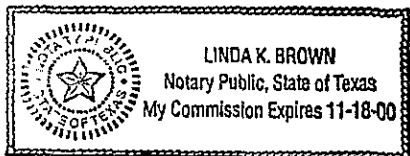


THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

On December 30, 1999 before me, a Notary Public in and for the State of Texas, personally appeared John T. La Duc, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

[NOTARY SEAL]

WITNESS my hand and official seal.



Linda K. Brown
Notary's Signature

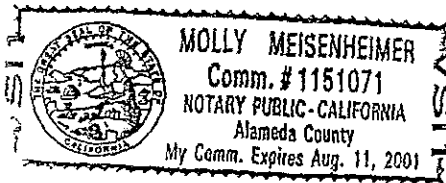
ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda } ss.

On 01/26/2000 before me, Molly Meisenheimer, notary
(DATE) (NOTARY)
personally appeared Barbara J. Cook
SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Molly Meisenheimer
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☒ CORPORATE OFFICER

Chief
TITLE(S)

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Covenant to restrict use
TITLE OR TYPE OF DOCUMENT

13
NUMBER OF PAGES

12/30/99
DATE OF DOCUMENT

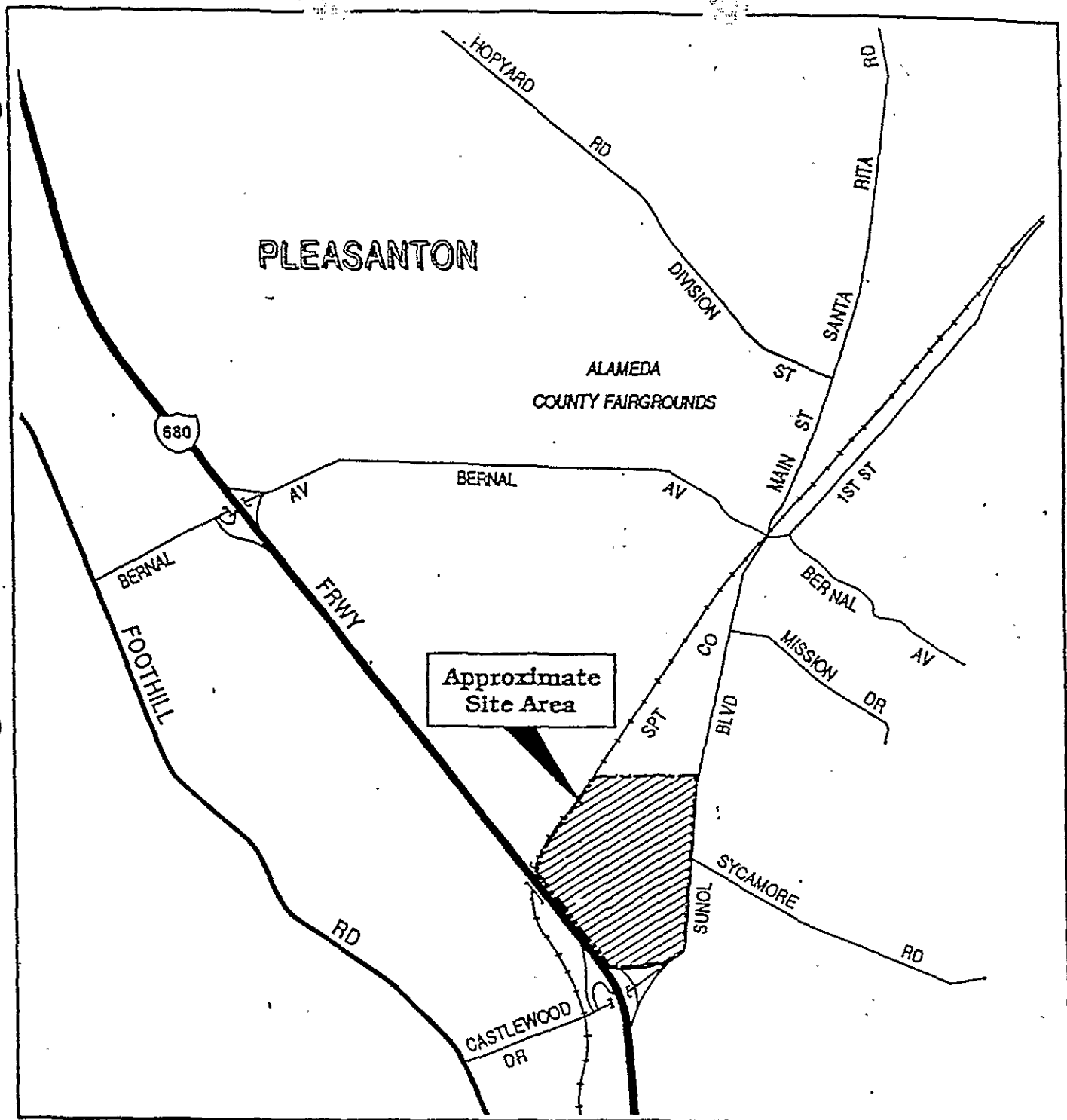
SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
Northern California Coastal
Cleanup Operations Branch

OTHER

EXHIBIT A

Site Map and Legal Descriptions



Modified from:
Thomas Brothers map, 1986

Figure 1 : SITE LOCATION MAP

Attachment

Legal Description for the E Yard

JUNE 22, 1999
JOB NO.: 90165-00

LEGAL DESCRIPTION
DEED RESTRICTION AREA
KAISER CENTER FOR TECHNOLOGY
PLEASANTON, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF PLEASANTON, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PARCEL OF LAND, DESCRIBED IN THAT CERTAIN DEED, RECORDED JULY 18, 1977 IN REEL 4960 OF OFFICIAL RECORDS, AT IMAGE 72, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERN CORNER OF SAID PARCEL OF LAND, SAID NORTHWESTERN CORNER BEING MARKED BY A CONCRETE MONUMENT AND BRASS DISK STAMPED "R.E.9041";

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE NORTHWESTERN LINE OF SAID PARCEL OF LAND, SOUTH 33°48'35" WEST 878.00 FEET;

THENCE, LEAVING SAID NORTHWESTERN LINE, SOUTH 56°11'25" EAST 522.30 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, SOUTH 10°00'35" EAST 110.22 FEET;

THENCE, SOUTH 38°18'20" WEST 116.00 FEET;

THENCE, NORTH 28°37'24" WEST 79.00 FEET;

THENCE, NORTH 32°07'45" WEST 89.47 FEET;

THENCE, NORTH 65°37'48" EAST 68.72 FEET;

THENCE, NORTH 70°56'34" EAST 79.95 FEET TO SAID POINT OF BEGINNING, AND CONTAINING 0.39 ACRES OF LAND, MORE OR LESS.

END OF DESCRIPTION



Christopher S. Harmison
CHRISTOPHER S. HARMISON
L.S. NO. 7176
EXPIRES: DECEMBER 31, 1999

PARCEL B
89 PM 13

FOUND CONCRETE
MONUMENT W/BRASS DISK
STAMPED RCE 9041

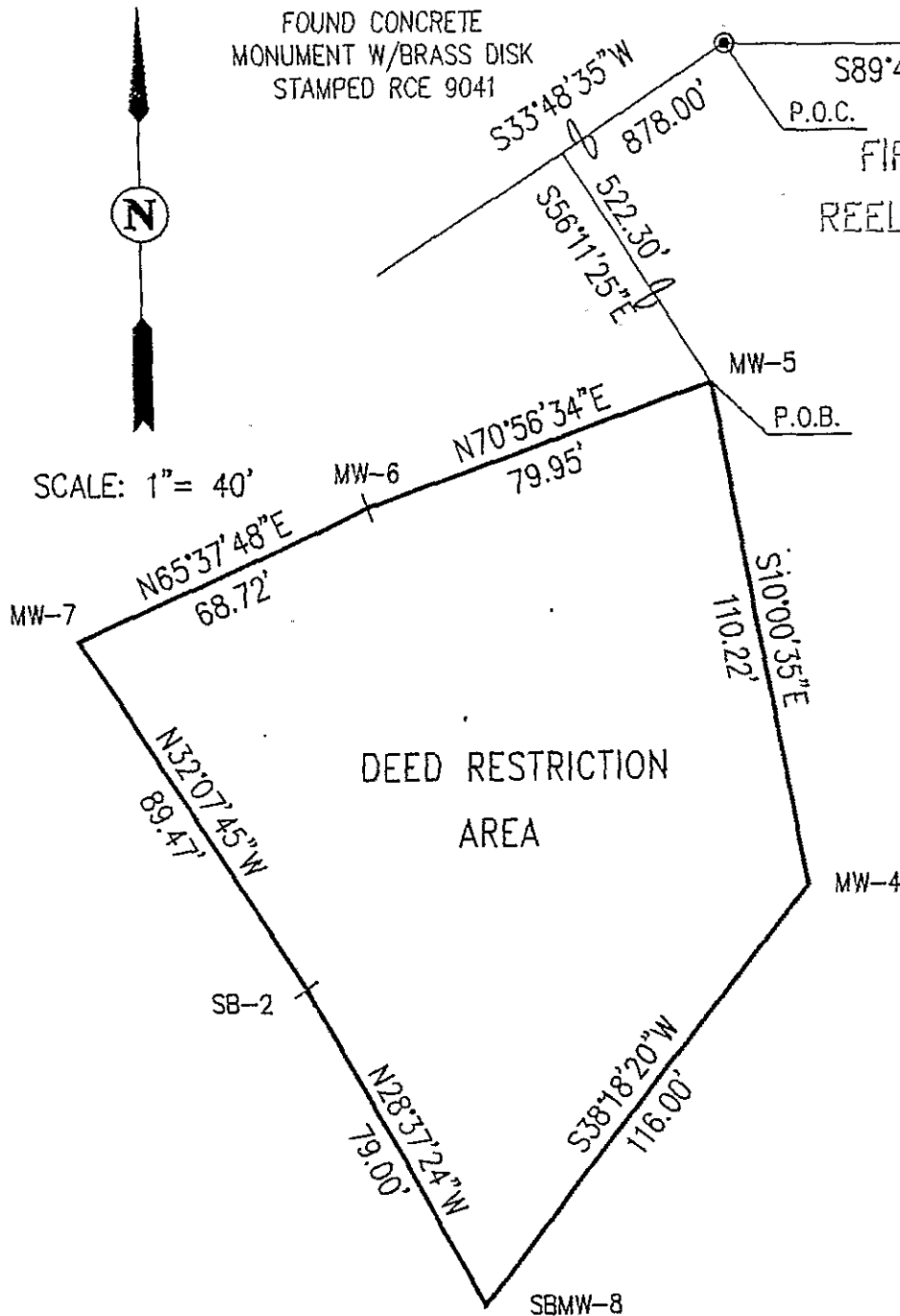
S89°42'56"E

P.O.C.

FIRESTONE ET.AL
REEL 4960 IMAGE 72

N

SCALE: 1" = 40'



PLAT TO ACCOMPANY LEGAL DESCRIPTION
DEED RESTRICTION AREA
KAISER CENTER FOR TECHNOLOGY
PLEASANTON, CALIFORNIA
DATE: JUNE, 1999

Carlson, Barbee, & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS

2000 CROW CANYON PLACE, SUITE 250 SAN RAMON, CALIFORNIA 94583

TELEPHONE: (925) 866-0322 FAX: (925) 866-8575